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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,656	03/11/2004	Timothy D. Killinger	29618/39225C	6319

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EXAMINER

POLLICOFF, STEVEN B

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/798,656	Applicant(s) KILLINGER ET AL.	
	Examiner Steven B. Pollicoff	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 5,6,9,15 and 20-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,7,8,10-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 1-23 are pending. Applicant's election without traverse of Species I directed to Figs 1-2 and claims 1-4,7,8,10-14 and 16-19 in the reply filed on 10/02/06 is acknowledged. Claims 5,6,9,15 and 20-23 have been withdrawn

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,7,10,13,16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Barber (US Pat 6,352,155).

With respect to claims 1,3,7,13 and 18, Barber discloses a storage container comprising: a base defining a bottom wall (Barber Fig 1 ref 12) and a side wall (14 and 16) extending upwardly from the bottom wall to define a storage receptacle; a first cover section (70) pivotably coupled to the base side wall and movable between a closed position in which the first cover section overlies the portion of the storage receptacle and an open position in which the first cover section is rotated away from the storage receptacle and extending over a portion of the storage receptacle; and a second cover section (40) pivotably coupled (at 30) to the base side wall and movable between a closed position, in which the second cover section overlies a remaining portion of the storage receptacle, and an open position, in which the second cover section is rotated

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away from the storage receptacle; wherein the base, first cover section, and second cover section in the closed position are capable of defining an overall profile height sufficiently low to allow insertion of the storage container into a stowage space having a low profile height, wherein the first and second cover sections pivot about respective pivot axes that are substantially perpendicular to the base side wall (Fig 2 at ref 34).

With respect to claims 10 and 16, Barber discloses that the exterior sides of the first and second cover define writing surfaces (Fig 2 ref 70 and 40).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barber (US Pat 6,352,155).

With respect to claims 8 and 14, while Barber does not disclose that the overall profile height is less than 4 inches, it would have been obvious to one having ordinary

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skill in the art at the time the invention was made to change the size of the storage container of Barber to be less than 4 inches since it has been held that a mere change in size/proportion of an invention is not sufficient to patentably distinguish over prior art. In re Rose, 105 USPQ 237 (CCPA 1955). See MPEP 2144.04 (IV).

Claims 2,4,11,12,17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barber (US Pat 6,352,155) as applied to claims 1,3,13 and 18 above and further in view of Butcher (US Pat 5,485,922).

With respect to claims 2,4,17 and 19 Barber does not disclose that an interior side of the first/second cover section defines a storage pocket, wherein the storage pocket is housed inside the storage receptacle when the first/second cover section is in the closed position and wherein the storage pocket is accessible when the first/second cover section is in the open position. However, Butcher discloses a portable computer case having a cover section defining storage pockets (Fig 1 ref 67). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first/second cover sections of the Barber case to include storage pockets, as taught by Butcher, for the purpose of housing additional computer accessories that are easily removed for use with the computer when the case is opened.

With respect to claims 11 and 12, Barber does not disclose a roller and a handle coupled to the base near the bottom wall. However, Butcher discloses a roller (Fig 4 ref 75) and handle (80) coupled to the base near the bottom wall. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made

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to modify the base of the Barber case to include rollers and a handle, as taught by Butcher, for the purpose of better facilitating transportability of the case (column 7 lines 66-67 and column 8 lines 1-2).

Response to Arguments

Applicant's arguments with respect to claims 1-4, 7, 8, 10-14 and 16-19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 sheet attached below.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SBP
SBP 12/21/06


Mickey Yu
Supervisory Patent Examiner
Group 3700

NEW SHEET

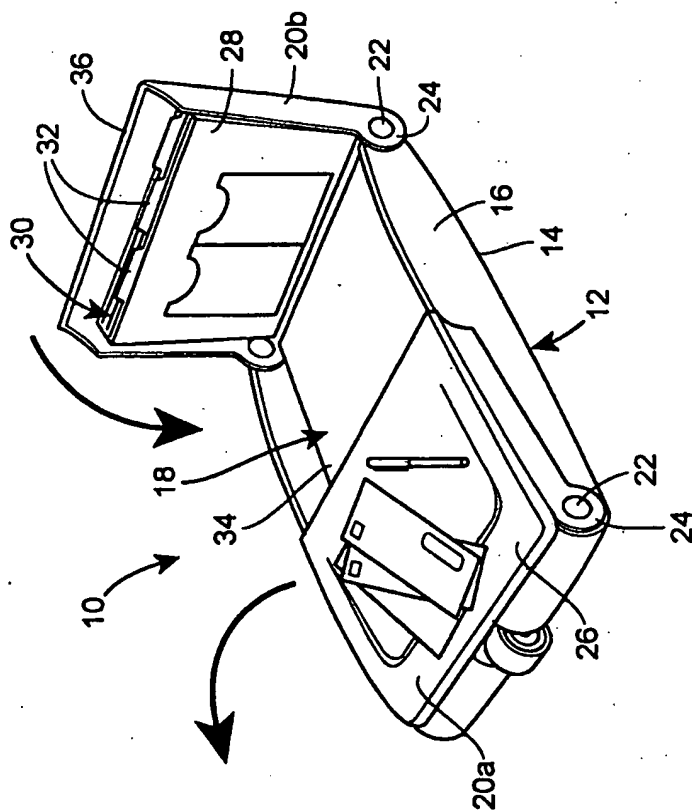


FIG. 2a

APPROVED FOR ENTRY 8/20/06 12/21/06